

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 81, “Nursing Facilities,” and to adopt new Chapter 166, “Quality Improvement Initiative Grants,” Iowa Administrative Code.

The proposed amendments expand the uses of civil money penalties collected from nursing facilities to include a Quality Improvement Initiative Grant. These grants are intended to fund projects that directly or indirectly enhance quality of care or quality of life for nursing facility residents.

Section 1919 of the Social Security Act and Iowa Code section 249A.19 allow the Department to impose civil money penalties when a health care facility is not in substantial compliance with one or more Medicaid participation requirements. These penalties may range from \$50 to \$10,000 per day, depending on the kind of deficiency recorded by the Department of Inspections and Appeals (the agency that certifies nursing facilities for participation in the Iowa Medicaid program). The funds collected are to be applied to the protection of the health or property of the residents of the facilities determined to be out of compliance.

The Centers for Medicare and Medicaid Services has clarified that states may direct collected civil penalty funds to entities other than nursing facilities as long as the funds are used in accordance with the intent of the statute. States may target these resources for initiatives carried out by stakeholders, such as nursing facilities, consumer groups, professional nursing home associations, ombudsmen, and quality improvement organizations.

Under these amendments, nursing facilities and other stakeholder groups may apply for a Quality Improvement Initiative Grant in any calendar year in which the Department sets aside moneys for this purpose. The grants are available only for initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers. Grants shall be awarded for short-term quality improvement initiatives (three years or less). An initiative shall be self-sustaining once implemented unless the initiative is a one-time project.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before November 9, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Wednesday, November 10, 2010, from 2 to 4 p.m. at the Iowa Medicaid Enterprise, Rooms 128 and 129, 100 Army Post Road, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 249A.4 and 249A.19.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 81.50(7):  
**81.50(7) Authority to settle penalties.** The department of inspections and appeals has the authority to settle cases at any time before the evidentiary hearing.

ITEM 2. Rescind and reserve subrule **81.52(4)**.

ITEM 3. Amend rule 441—81.53(249A) as follows:

**441—81.53(249A) Civil money penalties—settlement of penalties. Use of penalties collected by the department.** ~~The department of inspections and appeals has the authority to settle cases at any time prior to the evidentiary hearing decision.~~ Civil money penalties collected by the department shall be applied to the protection of the health or property of residents of facilities that the department of inspections and appeals finds deficient. Funds may be used for:

1. Payment for the cost of relocating residents to other facilities;
2. Recovery of state costs related to the operation of a facility pending correction of deficiencies or closure;
3. Reimbursement of residents for personal funds or property lost at a facility as a result of actions by the facility or by individuals used by the facility to provide services to residents; and
4. Funding of projects to improve the quality of life or quality of care of nursing facility residents through quality improvement initiative grants awarded pursuant to 441—Chapter 166.

ITEM 4. Adopt the following **new** 441—Chapter 166:

CHAPTER 166  
QUALITY IMPROVEMENT INITIATIVE GRANTS

**441—166.1(249A) Definitions.**

“*Eligible entities*” means nursing facilities, state agencies, nursing facility advocacy groups, and other nursing facility stakeholder groups.

“*Nursing facility*” means a licensed nursing facility certified in accordance with the provisions of 42 CFR Part 483 as amended to September 23, 1992, to provide health services. “Nursing facility” includes swing-bed hospitals and hospital-based nursing facilities that are Medicare-certified and provide only skilled level of care unless stated otherwise.

“*Quality improvement initiative*” or “*initiative*” means an innovative project that prevents noncompliance with state or federal requirements for nursing facilities and that directly or indirectly benefits nursing facility residents by enhancing their quality of life or quality of care.

**441—166.2(249A) Availability of grants.** At the beginning of each calendar year, the department shall set aside an annual amount from the civil money penalty fund established pursuant to Iowa Code section 249A.19 to be awarded in the form of grants to eligible entities for approved quality improvement initiatives. At no time shall the grant set-aside cause the civil money penalty fund to drop below \$1 million.

**166.2(1)** In any calendar year in which sufficient funds are available in the civil money penalty fund to support quality improvement initiative grants, the department shall issue a notice for applications for grants.

**166.2(2)** There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

**441—166.3(249A) Requirements for applicants.** Eligible entities wishing to apply for quality improvement initiative grants must meet the following requirements:

**166.3(1)** Eligible entities may submit an application on behalf of a specific facility, on behalf of a group of facilities, or on behalf of a stakeholder group. However, grant funds awarded shall be distributed to one distinct entity that shall be contractually responsible for the funds.

**166.3(2)** The applicant must demonstrate the capacity to carry out the initiative for which the grant is requested.

**166.3(3)** At the time of the application, a facility applicant must not have:

- a. Any pending enforcement actions that could result in the closure of the facility; or
- b. Any outstanding sanctions by the Iowa Medicaid enterprise or the Centers for Medicare and Medicaid Services.

**166.3(4)** An applicant previously awarded a quality improvement initiative grant that failed to achieve that initiative's intended goals or outcomes shall be ineligible to apply for a period of five years following that grant award. However, a grant may be considered if the applicant's inability to complete the initiative was due to circumstances beyond the applicant's control.

**166.3(5)** An applicant may receive a maximum of two grants within a five-year period.

**441—166.4(249A) Requirements for initiatives.** Grants are available only for quality improvement initiatives that are outside the scope of normal operations for the nursing facility or other applicant. Grants cannot be used as replacement funding for goods or services that the applicant already offers.

**166.4(1)** The applicant must be able to identify:

- a. Areas in need of improvement, including staff education or training needs not available through current corporate or facility contract employment; and
- b. Efficient uses of the quality improvement initiative grant to improve the quality of life or quality of care of nursing facility residents.

**166.4(2)** Grants shall be awarded for short-term quality improvement initiatives (three years or less).

**166.4(3)** The applicant shall not submit a request for or receive a grant for the same type of initiative previously awarded a grant.

**166.4(4)** Grant awards shall be restricted to one-time initiatives or initiatives that will be self-sustaining once implemented. Costs to maintain the initiative may be considered allowable costs on the nursing facility's financial and statistical report, subject to 441—subrule 81.10(1) and rule 441—81.6(249A).

**166.4(5)** Quality improvement initiative grants are not available for the following:

- a. General operations or administrative salaries.
- b. Capital improvements, construction projects or other activities that would increase square footage or result in an increase in the assessed value of any property.
- c. Facility maintenance activities intended to meet the minimum standards for nursing facilities set forth in 481—Chapter 61.
- d. Goods or services for which the applicant or others are already obligated to pay.
- e. Vendor payments and payroll obligations for a facility's normal operations or for fulfillment of state or federal requirements.
- f. Costs related to travel, bonuses or other direct employee benefits.
- g. Costs that are not specifically outlined in the applicant's grant application or are already included in the facility's cost report.
- h. Projects, programs, goods or services that are unrelated to improving the quality of life or quality of care of nursing facility residents.

**441—166.5(249A) Applications.** Eligible entities shall apply for quality improvement initiative grants using Form 470-4869, Grant Award Application. Applications may be accessed electronically through the Iowa Medicaid enterprise Web site, [www.ime.state.ia.us/Providers](http://www.ime.state.ia.us/Providers).

**166.5(1)** Grant applications must be received by the Iowa Medicaid enterprise between February 1 and April 30 of any calendar year in which grant funds are available. Grant applications submitted before or after this period shall not be considered.

**166.5(2)** To be considered, each application must include, at a minimum, the following:

- a. A description of the initiative's vision or goal. The application must identify how the grant will improve the quality of care or quality of life of nursing facility residents.
- b. The objectives or expected outcomes of the initiative.
- c. An implementation plan.
- d. An education plan. For initiatives intended to provide education or training to stakeholders, the applicant shall submit a plan for the development and execution of the training curriculum.
- e. A sustainability plan. The application shall describe how the initiative is a one-time initiative or will be self-sustaining once the grant implementation period has ended.
- f. A budget, with competitive quotes. Applicants must include three quotes for the cost of equipment, construction and labor for the quality improvement initiative. The quotes shall be from businesses that comply with federal, state and local laws as required for the health and safety of the residents of the nursing facility.
- g. A monitoring plan. The application shall describe how the applicant will monitor and evaluate ongoing progress toward meeting the initiative's stated goals.
- h. The qualifications of professionals and other staff involved in the initiative.

**441—166.6(249A) Awarding of grants.** Grants will be awarded beginning July 1 of each calendar year in which grant funds are available.

**166.6(1)** A grant award review committee shall be appointed by the state Medicaid director. The committee shall review and evaluate all complete grant applications submitted within the required time frame.

**166.6(2)** Applications shall be evaluated using the following criteria (indicated on Form 470-4869, Grant Award Application):

- a. Vision or goal: 5 points.
- b. Description of initiative: 20 points.
- c. Effect on quality of care or quality of life of residents: 20 points.
- d. Objectives and outcomes: 20 points.
- e. Implementation plan: 25 points.
- f. Education plan: 5 points.
- g. Sustainability: 5 points.

**166.6(3)** Each grant application must score at least 85 points on the evaluation criteria for the application to be recommended to the department director for an award.

**441—166.7(249A) Grant requirements.** Grant awards are subject to the following general requirements.

**166.7(1) Contract.** Grants for approved applications shall be awarded through a contract entered into by the department and the applicant. Grant funds shall be distributed to grantees in quarterly increments.

**166.7(2) Progress report.** The grantee shall submit quarterly progress reports following the date of the award until completion of the initiative. A grantee that fails to submit a quarterly progress report shall forfeit any future grant award distributions.

**166.7(3) Final report.** The grantee must submit a final report to the bureau of long term care of the Iowa Medicaid enterprise within 60 days of completion of the initiative.

- a. The report shall be submitted on Form 470-4950, Grant Award Final Report.
- b. The final report must provide evidence of successful completion of the quality improvement initiative and must address the following:
  - (1) The purpose of the grant,
  - (2) The expected outcomes of the initiative,
  - (3) The actual outcomes of the initiative,

- (4) The number of residents who benefited from the initiative,
- (5) The status of the action plan for sustainability if the initiative will continue beyond the grant funding.

These rules are intended to implement Iowa Code section 249A.19.